IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES

In re Application of: Anders (nmi) Vinberg

Serial No.:   10/091,067

Filing Date: March 4, 2002

Group Art Unit: 2452

Examiner: Philip C. Lee

Confirmation No.:   8007

Title: METHOD AND APPARATUS FOR GENERATING AND
RECOGNIZING SPEECH AS A USER INTERFACE ELEMENT
IN SYSTEM SAND NETWORK MANAGEMENT

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

REPLY BRIEF

Pursuant to 37 C.F.R. § 1.193, Appellant respectfully files this Reply Brief in response to the Examiner's Answer dated March 17, 2010.

ARGUMENTS

Appellant filed an Appeal Brief on August 26, 2009, a first Corrected Appeal Brief on December 11, 2009, and a Second Corrected Appeal Brief on January 19, 2010, explaining clearly and in detail why the rejections of the claims in the final *Office Action* are improper. Specifically, Appellant demonstrated that Claims 1, 3-11, 13, 15, and 17-24 are allowable over the cited references. While Appellant appreciates the Examiner's thoughtful consideration of this case and the Examiner's response in the Examiner's Answer dated March 17, 2010, Appellant respectfully submits that these rejections continue to be improper and should be reversed by the Board.

I.   Claims 1, 4, 13, 15, and 20 are allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann* combination

In the Appeal Brief, Appellant sought to demonstrate that the proposed *Ward-Lewis-Lohmann* combination does not disclose, teach, or suggest the combination of elements recited in Appellant's claims. Appellant addresses each argument below:

A.   The cited references do not disclose *"filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition"* and *"outputting the audio notification message via the notification path."*

It continues to be Appellant's position that the proposed *Ward-Lewis-Lohmann* combination fails to teach, suggest, or disclose "filtering the alert condition to determine a notification path associated with the alert condition, **the notification path being determined based at least on a property of an object associated with the alert condition**" and then "outputting the audio notification message **via the notification path**." In the *Examiner's Answer*, the Examiner continues to point to the *Ward* for disclosure of determining a notification path based on at least on a property of an object. (*Examiner's Answer*, page 19-20). Appellant continues to respectfully disagree.

As discussed previously, the "paths" referred to in *Ward* relate to paths by which data is accumulated. For example, *Ward* discloses that "the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored." (*Ward*, col. 5, ll. 21-27). Appellant respectfully submits that paths by which data is accumulated, even if depending on a particular type of failure, are not notification paths for outputting the alert condition.

With regard to the generation of the alert, *Ward* merely discloses that "[o]nce it is determined that an alert should be issued, "an alert can be issued in a number of ways." (*Ward*, col. 7, ll. 25-27). In particular, the alert may be delivered "in-band" or "out-of-band." (*Ward*, at col. 7, ll. 28-29). More particularly, "out-of band" alerts may be delivered by "sending a protocol message over a switched telephone connection to the system manager facility 34, by dialing a phone number associated with a pager 56 or by dialing a phone

number to a phone 58 associated with a person and generating a synthesized voice message upon completing a connection with the phone 58." (*Ward*, col. 7, ll. 50-57). However, nowhere does *Ward* disclose determination of a notification path "based at least on a property of an object associated with the alert condition," as recited in Claim 1. Accordingly, it remains Appellant's position that *Ward* and the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest that the paths are "determine[ing] a notification path associated with the alert condition, **the notification path being determined <u>based at least on a property of an object</u>** associated with the alert condition" and "outputting the audio notification message <u>**via the notification path**</u>," as recited in Claim 1.

For at least this reason, the rejection of Claim 1 is improper.

B. **The cited references do not disclose *"the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems."***

As an additional distinction, the *Ward-Lewis-Lohmann* combination fails to teach, suggest, or disclose "the alert condition being detected in response to an event notification associated with at least one of <u>a plurality of heterogeneous application subsystems</u>, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are <u>**distinct**</u> from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems," as recited in Claim 1. In the *Examiner's Answer*, the Examiner continues to point to the *Ward* for disclosure of the plurality of heterogeneous application subsystems. (*Examiner's Answer*, page 21). Appellant continues to disagree.

According to *Ward*, however, an EISA server 12 includes a "system manager 22 . . . comprised of a 32 bit intelligent bus master board and supporting firmware, an EISA network interface adapter 24 and an intelligent disk array controller device 26." (*Ward*, Figure 1; col. 3, ll. 34-37 and 52-58). Accordingly, the cited components are all part the same server 12 (the

EISA server) shown in Figures 1 and 3 of *Ward*. As such, they do not perform distinct information technology management operations. Instead, they perform interrelated operations for the same EISA server. The mere disclosure in *Ward* that "the absence of the refresh signal," "an indication of a memory parity error," and "a printer error" may result in the generation of an alert does not disclose a plurality of heterogeneous application subsystems. (*Ward*, col. 5, ll. 51-65). Accordingly, *Ward* does not disclose, teach, or suggest "each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are **distinct** from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems," as recited in Claim 1.

For at least these additional reasons, the rejection of Claim 1 is improper.

C.   Conclusions

Appellant has shown above that the proposed *WardLewis-Lohmann* combination does not disclose, teach, or suggest at least two claim limitations recited in Appellant's Claim 1. Additionally, Appellant has shown that the proposed combination of references is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 1 (together with Claims 4 and 20 that depend from Claim 1) be withdrawn. Similar to Claim 1, Claims 13 and 15 each recite "a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition" and "a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems." Therefore, Appellant submits that Claims 13 and 15 are allowable at least for reasons similar to those discussed above with regard to Claim 1.

II. Claim 3 is allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann-Sabourin* combination

In the Appeal Brief, Appellant sought to demonstrate that the proposed *Ward-Lewis-Lohmann-Sabourin* combination does not disclose, teach, or suggest the combination of elements recited in Appellant's claims. Specifically, Appellant sought to demonstrate that the proposed *Ward-Lewis-Lohmann-Sabourin* combination does not disclose, teach, or suggest "wherein constructing an audio notification message includes identifying a portion of the message and replacing the identified portion with a synonym," as recited in Claim 3.

In the *Examiner's Answer*, the Examiner points to *Ward* for disclosure of constructing an audio notification message and to *Sabourin* for disclosure of identifying a portion of the message and replacing the identified portion with a synonym. (*Examiner's Answer*, page 24). However, *Sabourin* merely discloses a confusability tool that allows some flexibility in the selection of the lexicon that a computer is trained to recognize. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). According to *Sabourin*, the confusability tool may be used to automatically find word pairings that tend to cause high confusability, and a designer can replace the relevant orthographies with alternate synonyms. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). *Sabourin* further discloses that the simplification of a lexicon by replacing confusable words with non-confusable synonyms can be useful by facilitating understanding across a communication medium and for creating a confusable test lexicon to rigorously test a speech recognizer. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). However, nowhere does the cited portion disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym, as recited in Claim 3. The cited portions of *Sabourin* relate to computer recognition of human speech; they do not disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym. Accordingly, *Sabourin* and the proposed *Ward-Lewis-Lohmann-Sabourin* combination does not disclose, teach, or suggest that "constructing an audio notification message includes identifying a portion of the message and replacing the identified portion with a synonym," as recited in Appellant's Claim 3.

For at least this reason, the rejection of Claim 3 is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 3 be withdrawn.

III.   Claim 19 is allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination

In the Appeal Brief, Appellant sought to demonstrate that the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination does not disclose, teach, or suggest the combination of elements recited in Appellant's claim. Specifically, Appellant sought to demonstrate that the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination does not disclose, teach, or suggest "assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition," as recited in Claim 19.

In the *Examiner's Answer*, the Examiner continues to cite *Jones*, stating that *Jones* "teaches assigning the level of responsibility to each of the one or more users based upon the severity of the alert condition (i.e., type of object associated with the alert condition)." (*Examiner's Answer*, page 25). Appellant does not dispute that *Jones* discloses an alert file that stores alert information including "alert recipient information for each escalation level." (*Jones*, paragraph 29). It continues to be Appellant's position, however that identifying an alert recipient to receive an alert associated with predefined escalation level (i.e., alert severity) is not analogous to Appellant's "type of object associated with the alert condition," as it is recited in Claim 19. Accordingly, the proposed *Ward-Lewis-Lohmann-Cote-Jones* does not disclose, teach, or suggest "assigning the level of responsibility to each of the one or more users based upon a **type of object** associated with the alert condition," as recited in Claim 19.

For at least this reason, the rejection of Claim 19 is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 19 be withdrawn.

IV.   The Proposed Combinations of References Are Improper

It is clear based at least on the many distinctions discussed above that the proposed *Ward-Lewis-Lohmann*, *Ward-Lewis-Lohmann-Cote*, *Ward-Lewis-Lohmann-Fischer*, *Ward-Lewis-Lohmann-Sabourin*, *Ward-Lewis-Lohmann-Miller*, *Ward-Lewis-Lohmann-Goldberg*, *Ward-Lewis-Lohmann-Fischer-Official Notice*, *Ward-Lewis-Lohmann-Carleton*, *Ward-Lewis-Lohmann-Jones*, and *Ward-Lewis-Lohmann-Cote-Lawson* combinations do not, taken as a whole, suggest the claimed invention, taken as a whole. Appellants further submit that the Examiner has merely pieced together disjointed portions of references, with the benefit of hindsight using Applicant's claims as a blueprint, in an attempt to reconstruct Applicant's claims. Accordingly, it continues to be Appellant's position that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Appellant's invention to modify or combine *Ward*, *Lewis*, *Lohmann*, *Fischer*, *Sabourin*, *Miller*, *Goldberg*, *Official Notice*, *Jones*, and *Lawson* in the manner the Examiner proposes. Appellant's claims are allowable for at least this additional reason.

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an Appellant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's recent decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The

analysis regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S.Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the United States Patent and Trademark Office ("PTO") in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

To maintain the rejections of each of Appellant's claims the Examiner cites disjointed portions of three unrelated references. For example, with respect to independent Claim 1, the Examiner relies upon *Ward* for disclosure of determining a notification path but on *Lewis* for disclosure of filtering alert conditions. However, Appellant's claim explicitly requires "filtering the alert condition to determine a notification path." Even if *Ward* discloses a notification path and *Lewis* discloses filtering alert conditions, their proposed combination does not disclose "filtering the alert condition to determine a notification path" as recited in Appellant's claim. Such a piecemeal rejection of Appellant's claims fail to give credence to each element of Appellant's claims and to the overall combination of features recited in the claims. Accordingly, the Examiner's attempt to modify or combine the references, appears to constitute the type of impermissible hindsight reconstruction of Appellant's claims, using Appellant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Appellant respectfully submits that the proposed *Ward-Lewis-Lohmann* combination is improper. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this additional reason.
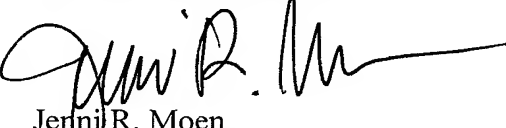
CONCLUSION

Appellant has demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellant respectfully requests the Board to reverse the final rejections and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

No fees are believed due; however, the Commissioner is authorized to charge any fees or credits to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

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Dated: May 17, 2010

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